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## Key Provisions in the CARES Act for Higher Education Institutions

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides educational institutions with financial assistance and contains legislative changes designed to mitigate the tremendous adverse impact of the coronavirus pandemic on higher education. This Alert will address the two primary provisions of the CARES Act affecting institutions of higher education (IHEs): the Education Stabilization Fund (ESF) and the Pandemic Education Relief Act, including the major funding and relief provisions available under the two programs.

### Education Stabilization Fund

The CARES Act creates the ESF with \$30.75 billion in total funding available through September 30, 2021. The ESF's stated purpose is to assist schools, including IHEs, to prevent, prepare for, and respond to the coronavirus pandemic. The ESF allocates this funding across three categories:

#### **1. Governor's Emergency Education Relief Fund – 9.8% (\$2.953 billion)**

Governors who submit approved applications to the Department of Education (DOE) for grants from this fund are eligible to receive flexible formula funding to allocate at their discretion. Specifically, governors may use grant money to provide emergency support grants to school districts, public and private universities, and other education-related entities that have been most significantly impacted by the coronavirus pandemic or deemed essential for providing emergency services to students.

The allocation of grant money from this relief fund follows a prescribed formula. The Secretary of Education must allocate grants to each state as follows: (1) 60% on the basis of the relative population of individuals ages 5-24; and (2) 40% on the basis of the relative number of children counted under Title I of the Elementary and Secondary Education Act (ESEA).

## **2. Higher Education Emergency Relief Fund – 46.3% (\$13.953 billion)**

IHEs will receive direct funding from the DOE under this second fund. The Higher Education Emergency Relief Fund dollars are allocated as follows:

- 90% (\$12.558 billion) will be disbursed directly to IHEs using the existing Title IV distribution system to prevent, prepare for, and respond to the coronavirus pandemic. In allocating these funds, 75% of what each institution receives is a function of its relative share of full-time equivalent students who are federal Pell Grant recipients, while the remaining 25% share is proportional to its full-time equivalent students who are not federal Pell Grant recipients. Students enrolled exclusively in distance education courses are excluded from this calculation.
- 7.5% (\$1.047 billion) is reserved for minority-serving institutions (e.g., historically black colleges and universities and tribal colleges).
- 2.5% (\$349 million) is reserved for smaller institutions that receive less than \$500,000 from the 90% sub-allocation, but still have significant unmet needs as a result of the coronavirus pandemic.

IHEs must use no less than 50% of funds to provide emergency grants directly to students for expenses related to the disruption of campus operations due to the coronavirus pandemic, including eligible expenses related to a student's cost of attendance, such as food, housing, course materials, technology, health care, or child care. Each institution generally has discretion on how to award aid and the amount of aid a student receives.

IHEs may use the balance of their allocated funds to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus pandemic, as long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities, endowments, or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.

## **3. Elementary and Secondary School Emergency Fund - 43.9% (\$12.229 billion)**

The ESF also provides emergency funds to elementary and secondary schools. Please contact one of the authors of this article or your Michael Best attorney if you have questions about this third fund.

## **4. Accessing Relief Funds**

To access relief funds, IHEs must complete a Certification of Funding and Agreement form and submit the form to [www.grants.gov](http://www.grants.gov). At this time, the DOE is dispersing emergency financial aid grants only in order to provide funds to students in need as quickly as possible. The DOE has stated it will provide instructions to IHEs on how to receive the balance of their allocated relief funds in the coming days. We will provide an update in a future alert as further information becomes available.

## **Pandemic Education Relief Act**

The CARES Act also establishes the Pandemic Education Relief Act (PERA). PERA provides IHEs, including proprietary institutions of higher education and postsecondary vocational institutions, a number of legislative and regulatory waivers and other flexibility for IHEs to administer Title IV federal student aid

programs disrupted by the coronavirus pandemic. The following is a sample of PERA's new waivers and flexibilities.

### **1. Campus-Based Aid Waivers – Section 3503**

This section waives the institutional matching requirement for certain Title IV campus-based aid programs for award years 2019-20 and 2020-21 for most IHEs. Section 3503, however, does not affect private for-profit organizations' matching requirement for federal work study programs.

Covered programs include Federal Supplemental Educational Opportunity Grants (SEOGs) for students deemed to have significant financial need and the Federal Work Study Program (FWS Program). Section 3503 also allows institutions to transfer unused work-study funds to be used for supplemental grants, but SEOG funds cannot be applied to work-study programs.

### **2. Use of SEOGs for Emergency Aid – Section 3504**

This section allows IHEs to award additional SEOG funds to students impacted by the coronavirus pandemic. Specifically, IHEs may reserve their allocation for a fiscal year to award, in such fiscal year, emergency financial aid grants to assist undergraduate or graduate students with unexpected expenses and unmet financial need as the result of the coronavirus pandemic. In determining eligibility under this section, IHEs may waive the need calculation required under the Higher Education Act, up to the amount of the maximum federal Pell Grant for the applicable academic year.

### **3. Federal Work-Study During a Qualifying Emergency – Section 3505**

This section allows IHEs the discretion to make payments under the (FWS Program to "affected work-study students," for "the period of time (not to exceed one academic year) in which affected students were unable to fulfill the students' work-study obligations for all or part of such academic year due to the qualifying emergency." In other words, Section 3505 allows schools to turn unused work-study funds into supplemental grants and continue paying work-study wages while schools are closed due to the pandemic.

IHEs may make payments to affected work-study students in an amount equal to or less than the amount of wages such students would have been paid under the FWS Program had the students been able to complete the work obligation necessary to receive work study funds. The pay will be based on the scheduled award, not the hours previously worked. Institutions may make payments available as a one-time grant or as multiple payments. Section 3503 waives the institutional matching requirement for the 2019-20 and 2020-21 academic years, except for private for-profit organizations.

For purposes of Section 3505, the term "affected work-study student" means a student enrolled at an eligible institution participating in the FWS Program who (1) received a work-study award for the academic year during which the coronavirus pandemic occurred; (2) earned FWS wages for such academic year; and (3) was prevented from fulfilling the student's work-study obligation for all or part of such academic year due to the coronavirus pandemic. Section 3505 specifically excludes payments to any student who was not eligible for work study or was not completing the work obligation necessary to receive work study funds under the FWS Program prior to the coronavirus pandemic.

#### **4. Adjustment of Subsidized Loan Usage Limits – Section 3506**

If a student is not able to complete a semester (or equivalent) due to the coronavirus pandemic, this section excludes that semester from the total number of terms that student is eligible for subsidized loans.

#### **5. Exclusion from Federal Pell Grant Duration Limit – Section 3507**

If a student is not able to complete a semester (or equivalent) due to the coronavirus pandemic, this section excludes that semester from the total number of terms that student is eligible for Federal Pell Grants.

#### **6. Institutional Refunds and Federal Student Loan Flexibility – Section 3508**

This section directs the Secretary of Education to waive requirements for IHEs and students under the Return of Title IV rules to allow an institution to refund a student's Title IV funding if the student withdraws from the university due to the coronavirus pandemic.

In addition, Section 3508 requires institutions to report certain data to the Secretary of Education in connection with such student withdrawals. Institutions may also provide students with an approved leave of absence due to the coronavirus pandemic and are not required to have a student return at the same point in their academic program if the student returns within the same semester.

Section 3508 also directs the Secretary of Education to cancel a borrower's obligation to repay the entire portion of a loan made under the Direct Loan Program associated with a payment period in which the student withdraws from an institution as a result of the coronavirus pandemic.

#### **7. Satisfactory Academic Progress – Section 3509**

To the extent a student must withdraw from school due to the coronavirus pandemic, this section provides that such student's resulting grades or attempted credits would not affect his or her eligibility to continue to receive grants or loan assistance.

#### **8. National Emergency Educational Waivers – Section 3511**

This section permits the Secretary of Education, upon the request of a state educational agency or Native American tribe, to waive any statutory or regulatory provision from the Elementary and Secondary Education Act of 1965, except civil rights laws, to the extent necessary and appropriate in light of the coronavirus disaster declaration. Section 3511 prescribes the process for how state educational agencies and Native American tribes may seek such a waiver.

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